

FILED

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY

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UNITED STATES OF AMERICA

## UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

08cr1210-H

UNITED STATES OF AMERICA,

Magistrate Case No. 08MJ0945

Plaintiff,

v.

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

FRANCISCO PEREZ-TORRES (2),

Defendant.

(Pre-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caroline P. Han, Assistant United States Attorney, and defendant FRANCISCO PEREZ-TORRES, by and through and with the advice and consent of defense counsel, Inge Brauer, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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CPH:es:4/11/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before April 28, 2008.

6           4. The material witnesses, David Rojas-Tejes, Veronica Cruz-Ramos and Fabiola  
7 Lopez-Martinez, in this case:

8               a. Are aliens with no lawful right to enter or remain in the United States;

9               b. Entered or attempted to enter the United States illegally on or about  
10 March 25, 2008;

11              c. Were found in a vehicle driven by codefendant, Jose Eduardo Galvez-Aragon,  
12 at the San Ysidro, California Port of Entry (POE) and for whom the defendant was driving a vehicle  
13 that was to guide codefendant, Jose Eduardo Galvez-Aragon's vehicle. Defendant knew or acted  
14 in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the  
15 United States;

16              d. Were paying \$1,800 to others to be brought into the United States illegally  
17 and/or transported illegally to their destination therein; and,

18              e. May be released and remanded immediately to the Department of Homeland  
19 Security for return to their country of origin.

20           5. After the material witnesses are ordered released by the Court pursuant to this  
21 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
22 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
23 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
24 attack, that:

25              a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
26 substantive evidence;

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Material Witness(es) And Order Thereon in  
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1 b. The United States may elicit hearsay testimony from arresting agents  
2 regarding any statements made by the material witness(es) provided in discovery, and such  
3 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
4 against interest of (an) unavailable witness(es); and,

5 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
6 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
7 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
8 waives the right to confront and cross-examine the material witness(es) in this case.

9 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
10 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
11 further that defendant has discussed the terms of this stipulation and joint motion with defense  
12 counsel and fully understands its meaning and effect.

13 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
14 immediate release and remand of the above-named material witness(es) to the Department of  
15 Homeland Security for return to their country of origin.

16 It is STIPULATED AND AGREED this date.

17 Respectfully submitted,

18 KAREN P. HEWITT  
19 United States Attorney

20 Dated: \_\_\_\_\_

21 CAROLINE P. HAN  
22 Assistant United States Attorney

23 Dated: 4/11/08

24 Inge Brauer  
25 INGE BRAUER  
26 Defense Counsel for Perez-Torres

26 Dated: 4/11/08

27 Francisco Perez-Torres  
28 FRANCISCO PEREZ-TORRES  
Defendant

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**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 4/17/08

*A. Meléndez*  
United States Magistrate Judge